

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-147065-07
Date:
April 10, 2008

Re:

Legend

Husband =
Spouse =
Accountant =
Trust 1 =
Trust 2 =
Date 1 =
Date 2 =
Year 1 =
Year 2 =

Dear :

This is in response to a letter dated October 16, 2007, from your authorized representative, requesting rulings for extensions of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make elections under § 2632(c)(5) of the Internal Revenue Code to elect out of the generation-skipping transfer (GST) tax exemption automatic allocation rules.

The facts submitted and representations made are as follows. On Date 1, Husband created Trust 1 and Wife created Trust 2. Date 1 is in Year 1. Husband and Wife filed separate Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1 and reported the gifts to Trust 1 and Trust 2.

The estate tax inclusion period (ETIP) for the transfers to Trust 1 and Trust 2 ended on Date 2. Date 2 is after December 31, 2000, and in Year 2. It is represented

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that Husband and Wife met with Accountant and both Husband and Wife decided not to allocate any of their respective GST exemption to the transfers to Trust 1 and Trust 2, but instead to make elections under § 2632(c)(5) to have § 2632(c)(1) not apply. Accountant, however, failed to advise Taxpayers that Forms 709 for Year 2 must be filed in order to elect out under § 2632.

Husband and Wife request extensions of time under §§ 301.9100-1 and 301.9100-3 within which to make elections under § 2632(c)(5) to have § 2632(c)(1) not apply with respect to Trust 1 or Trust 2.

Section 2601 imposes a tax on every generation-skipping transfer made by a transferor to a skip person.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for decedents dying after December 31, 2003, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B). Under §§ 2632 (c)(5)(A)(i)(I) and (II), an individual may elect to have the automatic allocation rule contained in § 2632(c)(1) not

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apply to an indirect skip, or to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 2632(c)(4) provides that an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP. The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 26.2632-1(b)(2)(iii) of the Generation-Skipping Transfer Tax Regulations provides that in the case of a transfer subject to § 2642(f), the election is to be made by attaching a statement (the election out statement) to a Form 709 filed on or before the due date for timely filing of the Form 709 for the calendar year in which the ETIP closes. The Form 709, with the attached statement, must be filed whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year. The election out statement must identify the trust and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Prior year transfers that are subject to § 2642(f), the ETIP, and to which the election out is to apply, must be specifically described or otherwise identified in the election out statement.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-20 C.B. 189.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except

in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts and representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to make an election under § 2632(c)(5)(A)(i)(II) that the automatic allocation rules not apply to Husband's transfer to Trust 1. Further, Wife is granted an extension of time of 60 days from the date of this letter to make an election under § 2632(c)(5)(A)(i)(II) that the automatic allocation rules not apply to Wife's transfer to Trust 2.

The elections should be made in the manner described in § 26.2632-1(b)(2)(II)(B) on Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for § 6110

cc: